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### **Constitutional Law**

Donald T. Kramer, J.D.

#### V. Determination of Constitutionality of Legislation [§§ 109–221]

##### C. Establishing Constitutionality [§§ 166–202]

###### 1. Relevant Matters [§§ 166–184]

###### b. Construction in Favor of Constitutionality [§§ 172–179]

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#### **§ 177. Corollary rules of construction; court's rewriting the law—Reconciliation of conflicts and inconsistencies**

If an asserted conflict or repugnancy between a statute and the federal or state constitutions can be reconciled, the court must do so.<sup>[11]</sup> Courts are bound to construe statutes so as to give them validity and a reasonable construction; seeming inconsistencies in various provisions of the statutes should be reconciled, if possible, so as to arrive at the meaning that gives effect to all parts of the statutes.<sup>[12]</sup> It follows that where the language of a statute is consistent with the language and purposes of the constitution and can readily be reconciled therewith, the statute will be held constitutional.<sup>[13]</sup>

This rule applies to appellate courts as well as trial courts. Both have an obligation to pursue every reasonable path of reconciliation of a challenged statute consonant with the Constitution; every presumption in favor of the statute will be indulged, and every effort will be made to construe ambiguous language so as not to conflict with the fundamental law.<sup>[14]</sup>

#### **CUMULATIVE SUPPLEMENT**

##### **Cases:**

When interpreting a statute, courts will interpret it as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statute. Singh v. Superior Court, 140 Cal. App. 4th 387, 44 Cal. Rptr. 3d 348 (2d Dist. 2006), review filed, (July 21, 2006).

Before a court may declare unconstitutional an enactment of the legislative branch, it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. Arbino v. Johnson & Johnson, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420 (2007).

Before court can declare statute unconstitutional, it must appear beyond a reasonable doubt that statute and con-

stitutional provisions are clearly incompatible. Desenco, Inc. v. Akron, 84 Ohio St. 3d 535, 706 N.E.2d 323 (1999).

[END OF SUPPLEMENT]

[FN11] Westvaco Corp. v. South Carolina Dept. of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995), reh'g denied, (Mar. 7, 1996) (a legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt; a legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution).

[FN12] Gross v. General Motors Corp., 448 Mich. 147, 528 N.W.2d 707 (1995).

[FN13] Mancuso v. Board of Education of Schenectady City School District, 207 Misc. 703, 142 N.Y.S.2d 428 (Sup. Ct. 1954), judgment aff'd, 309 N.Y. 726, 128 N.E.2d 422 (1955); State ex rel. Harbage v. Ferguson, 68 Ohio App. 189, 22 Ohio Op. 139, 34 Ohio L. Abs. 129, 36 N.E.2d 500 (2d Dist. Franklin County 1941), appeal dismissed, 138 Ohio St. 617, 22 Ohio Op. 152, 37 N.E.2d 544 (1941).

[FN14] Childs v. Childs, 69 A.D.2d 406, 419 N.Y.S.2d 533 (2d Dep't 1979), appeal dismissed, cert. denied, 446 U.S. 901, 100 S. Ct. 1824, 64 L. Ed. 2d 253 (1980).

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